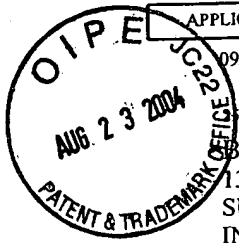




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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,741	12/29/2000	Eugene E. Osborne	8266-0221	7219

267 7590 10/04/2002
BOSE MCKINNEY & EVANS LLP
135 N PENNSYLVANIA ST
SUITE 2700
INDIANAPOLIS, IN 46204

EXAMINER

SANTOS, ROBERT G

ART UNIT PAPER NUMBER

3673

DATE MAILED: 10/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED
OCT 03 2002
BOSE MCKINNEY & EVANS

Docketed By: Kab
Date: 10/8/02

Office Action Summary



Application No.

09/750,741

Applicant(s)

OSBORNE ET AL.

Examiner

Robert G. Santos

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2000 and on 06 February 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) 75-85 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-19, 56 and 59-66 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10, 20-55, 57, 58 and 67-74 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-74, 76-80, and 82-85, drawn to a patient support, classified in class 5, subclass 600.
 - II. Claims 75 and 81, drawn to a frame for a patient support, classified in class 5, subclass 200.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it appears that the patient support apparatus would perform equally well with support frame elements having alternative types of structural configurations. The subcombination has separate utility such as for use with other types of patient support devices such as a convertible stretcher or wheelchair.

Art Unit: 3673

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

4. This application contains claims directed to the following patentably distinct species of the claimed invention:

SPECIES 1	FIGURES 1-7, 14, 17-21, 22-35, & 40-47
SPECIES 2	FIGURES 8-13
SPECIES 3	FIGURES 15 & 16
SPECIES 4	FIGURES 36-39
SPECIES 5	FIGURE 48
SPECIES 6	FIGURE 49
SPECIES 7	FIGURES 50 & 51
SPECIES 8	FIGURES 52 & 53
SPECIES 9	FIGURES 54 & 55
SPECIES 10	FIGURES 56-58
SPECIES 11	FIGURES 59 & 60
SPECIES 12	FIGURES 61-91
SPECIES 13	FIGURES 92-112, 114, & 115
SPECIES 14	FIGURE 113.

Art Unit: 3673

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. During a telephone conversation with Norman J. Hedges on September 12, 2002 a provisional election was made without traverse to prosecute the invention of Group I and Species 13, claims 1-74. Affirmation of this election must be made by applicant in replying to this

Art Unit: 3673

Office action. Claims 75-85 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

7. Claims 8 and 31 are objected to because of the following informalities: In the second line of claims 8 and 31, "removable" should be changed to --removably--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. Claims 57 and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "guide" as recited in claim 57 lacks proper antecedent basis, thereby rendering the claims indefinite.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 2, 7-10, 30-33, 36-38, 40-43, 45-52, and 55 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tappel '136 (note especially Figures 1, 3, & 4 and column 5, lines 29-44).

11. Claims 1, 2, 7-10, 30-38, 40-43, 45-52, and 55 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ferrand et al. '010 (note especially Figures 79-82 & 85; column 37, lines 59-68; and column 38, lines 1-31 & 50-65).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3, 5, 6, 20-29, 34, 35, 39, 44, 53, 54, 57, 58, and 67-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tappel '136. As concerns claims 3, 5, 6, 20-29, 39, 44, 53, 54, 57, and 58, Tappel '136 does not specifically disclose conditions wherein the opening and controller both include curved peripheries and wherein the retainer and controller cooperate

Art Unit: 3673

to form first and second different widths. It would have been an obvious matter of design choice at the time the invention was made to modify the Tappel '136 reference by providing an opening and a controller both having curved peripheries or by providing a retainer and a controller which cooperate to form first and second different widths since it appears that the device of Tappel '136 would perform equally well regardless if the opening and controller disclosed therein included an outline having either contoured edges, straight edges, or varying widths.

As concerns claims 34 and 35, Tappel '136 discloses the use of a latch (136, 137) fixedly attached to the exterior of the housing as opposed to extending through an opening disposed in the housing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Tappel '136 with a latch extending through an opening disposed in the housing, since such a modification would have been generally recognized as being within the level of ordinary skill in the art. With regards to claims 67-74, Tappel '136 does not specifically disclose the use of an additional third connector or the use of an additional second frame. It would have been an obvious matter of design choice at the time the invention was made to modify the Tappel '136 reference by providing an additional third connector or an additional second frame since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

14. Claims 3, 5, 6, 20-29, 39, 44, 53, 54, 57, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrand et al. '010. Ferrand et al. '010 does not specifically disclose conditions wherein the opening and controller both include curved peripheries and wherein the

Art Unit: 3673

retainer and controller cooperate to form first and second different widths. It would have been an obvious matter of design choice at the time the invention was made to modify the Ferrand et al. '010 reference by providing an opening and a controller both having curved peripheries or by providing a retainer and a controller which cooperate to form first and second different widths since it appears that the device of Ferrand et al. '010 would perform equally well regardless if the opening and controller disclosed therein included an outline having either contoured edges, straight edges, or varying widths.

Allowable Subject Matter

15. Claims 11-19, 56, and 59-66 are allowed. Since the respective controllers disclosed in Tappel '136 and Ferrand et al. '010 are designed to be suspended from openings disposed within their respective barriers, the examiner respectfully asserts that it would not have been obvious to modify these controllers such that they are "positioned to *slide along the lower surface* defining the opening" as explicitly recited in independent claim 11. Moreover, the respective controllers of Tappel '136 and Ferrand et al. '010 merely travel along a horizontal axis of the barrier as opposed to moving along the barrier in a path having "longitudinal *and* transverse components" as particularly recited in independent claim 56.

16. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3673

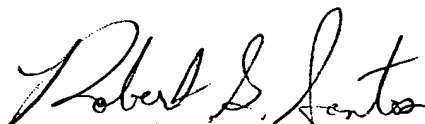
Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ferrand et al. '776, Dixon et al. '037, Osborne et al. '142, Weismiller et al. '679, Osborne et al. '742, Ruehl '235, Menkedick et al. '510, Welling et al. '262, Ferrand et al. '628, Brooke et al. '393, Dixon et al. '250, Brooke et al. '767, Weismiller et al. '310, Weismiller et al. '903, Ferrand et al. '017, Ferrand et al. '016, Weismiller et al. '423, Marra, Jr. '897, Reser '829, Drew et al. '015, Kerwit '709, and Mitchell et al '664.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (703) 308-7469. The examiner can normally be reached on M-Th and second Fridays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (703) 308-2978. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.


Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
September 28, 2002